

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555-scc

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5 In the Matter of:

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7 LEHMAN BROTHERS HOLDINGS INC.,

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9 Debtor.

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12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 April 10, 2018

17 4:09 PM

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21 B E F O R E :

22 HON SHELLEY C. CHAPMAN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: F. FERGUSON

1 HEARING re Doc #57838 Motion for Temporary Restraining Order
2 and Order to Show Cause filed by Chester B. Salomon on
3 behalf of Institutional Investors

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15 ALSO PRESENT TELEPHONICALLY:
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20 WILLIAM HAO
21 LOREN HARMAN
22 PATRICK MOHAN
23
24
25

1 P R O C E E D I N G S

2 THE COURT: Thank you for making yourselves
3 available on extremely short notice. Let's see who's on the
4 phone. Okay. Well, there are a couple of folks on the
5 phone and a number of them are in live mode, so we'll wait
6 and see who wants to be heard, but why don't we start with
7 appearances please. Hello, Mr. Ostrow. How are you?

8 MR. OSTROW: I'm well, Your Honor. I hope you're
9 doing as well as you can be under the circumstances.

10 THE COURT: Thank you, I appreciate it.

11 MR. OSTROW: And thank you for hearing us on short
12 notice. Alec Ostrow, along with Chester Solomon of Becker,
13 Glynn, Muffly, Chassin & Hosinski, on behalf of the
14 institutional investors.

15 THE COURT: Thank you. Hello.

16 MR. KRAUT: Good afternoon, Your Honor, Michael
17 Kraut, Morgan Lewis, here for US Bank National Association
18 as Trustee.

19 MR. NEWMAN: Good afternoon, Your Honor, Zachary
20 Newman from Hahn & Hessen, representing Wells Fargo, along
21 with my co-counsel, Robert Schnell, from Faegre Baker
22 Daniels, who is not admitted in this Court, but would like
23 to be heard today if that's all right with Your Honor.

24 THE COURT: Absolutely, Your Honor. Welcome sir.

25 MR. SCHNELL: Thank you, Your Honor.

1 MR. NEWMAN: Thank you, Judge.

2 MR. HOUPPT: Good afternoon, Your Honor,
3 Christopher Houpt of Mayer Brown for Citibank.

4 THE COURT: Citi, okay. All right. Does -- yes,
5 go ahead?

6 MR. LORENZO: Good afternoon, Your Honor. Alex
7 Lorenzo, Alston & Bird for Wilmington Trust.

8 THE COURT: All right. Does anyone on the phone
9 plan to participate in the hearing?

10 MR. RADEMACHER: Good afternoon, Your Honor, this
11 is Kurt Rademacher from Morgan Lewis on behalf of the US
12 Bank National Association. I do not expect to have to
13 speak, but I am available if there are any questions.

14 THE COURT: All right, very good. Thank you.
15 Anyone else? Okay, we'll leave it there for the moment.
16 Okay, so let me tell you what I know. We'll go from there.
17 What I know I sonly what I have seen in the papers that were
18 filed by Mr. Solomon and Mr. Ostrow on behalf of the
19 institutional investors seeking emergency relief to enjoin
20 the Trustees, as they put it, from evading the Court's
21 exclusive jurisdiction over the R&BS settlement. And
22 attached to the moving papers are, among other things, the
23 article 77 proceeding that was commenced, I believe, on
24 April 4th. That's -- I'm gleaning that from the index
25 number and the received in the New York state court Filing

1 System, April 4th.

2 MR. OSTROW: That's correct.

3 THE COURT: Okay. And when I saw you all last, we
4 had spent many months of quality time together during the
5 trial. And I think the -- I rendered the decision approving
6 the settlement on or about March 8th, right? And then took
7 a little while for everyone to agree on a form of order, and
8 I think the form of order was entered around March 15th,
9 right.

10 MR. OSTROW: Your Honor, that was the order
11 approving -- at the estimation hearing.

12 THE COURT: At the estimation hearing.

13 MR. OSTROW: The settlement was the previous July.

14 THE COURT: Yes, the settlement was many, many
15 months ago. Okay. So, now, what it appears is that under
16 some but not all of the indentures, there's a lack of clear
17 understanding on behalf of the Trustees, as to how to apply
18 certain of the waterfall, what I'll call the waterfall
19 payment provisions.

20 MR. KRAUT: Yes, Your Honor. The only
21 clarification I would make is that in some of the trust, the
22 Trustee is not the party charged with distributing the
23 payments and so it would be another deal party, a paying
24 agent, but the Trustee or another deal party responsible for
25 distributing payments by the petitioners.

1 THE COURT: Very good, thank you. That's the
2 article 77 proceeding, which was condensed, is now with
3 Justice Friedman who, apparently, has the happy task of
4 doing this with respect to -- for other Trustees in other
5 proceedings.

6 MR. KRAUT: Yes, involving some of the same
7 Trustees. This is the third proceeding of this exact type
8 she's handling, where the institutional investors
9 (indiscernible).

10 THE COURT: So, that's an interesting question
11 which I will come back to, which is that given that she's
12 been doing this for a couple of years and given that it's a
13 number of the same Trustees, I'm going to want to know why
14 this started on April 4th. I do not understand that. It's
15 really neither here nor there, but it's something that I'm
16 going to want to know because I don't understand it.

17 So, the predicate for the emergency relief is the
18 fact that tomorrow there's a hearing before Justice
19 Friedman, to move the money from, essentially, the Trustees'
20 overnight accounts into some sort of an escrow account? Is
21 that what's happening, more or less? And Mr. Ostrow, you
22 don't want the money to move from the one place to the other
23 place?

24 MR. OSTROW: That's right, Your Honor. This is
25 about preventing a delay in distribution after all these

1 years.

2 THE COURT: But what I don't understand is,
3 because I'm focused on the extreme emergency nature of this
4 application, this all came in, you know, a couple of ours
5 ago, and we had to do this today because there's a hearing
6 at 10 o'clock tomorrow morning. What difference does it
7 make whether or not the money moves, where the money
8 continues to live? I get that you're unhappy with the fact
9 that they're doing this at all, but just in terms of the
10 immediate movement of the money from the one account to the
11 other account, what difference does that make? Bearing in
12 mind that, you know -- and I think this is true, and I see
13 Mr. Cosenza sitting in the back, so he can answer if his is
14 not true -- but the money has left Lehman -- correct?

15 MR. COSENZA: That's correct. Todd Cosenza from
16 Willie Farr & Gallagher.

17 THE COURT: Mr. Cosenza, come on up.

18 MR. COSENZA: Good afternoon, Your Honor.

19 THE COURT: To the microphone. Hello, Mr.
20 Cosenza. So, the money has left Lehman, right?

21 MR. COSENZA: That's correct, Your Honor, to the
22 designated -- there's a whole process set up --

23 THE COURT: Of course.

24 MR. COSENZA: -- before -- in the context with the
25 estimation proceeding to get the money to the Trustees so

1 they can deal with it as they need to deal with it.

2 THE COURT: Okay. So, why don't you sit up here
3 next to Ms. Schwartz, or wherever, in case I have to ask you
4 something else, okay. So, Mr. Ostrow, let's go back to the
5 question of what difference it makes where the money lives
6 until this gets figured out.

7 MR. OSTROW: Well, Your Honor, I want to preface
8 this by saying I'm probably the person in the room with the
9 least amount of knowledge about this, but this was done --
10 obviously, I was not here for any of the estimation
11 hearings.

12 THE COURT: Very winning argument, Mr. Ostrow.

13 MR. OSTROW: I understand that. But I make it a
14 point to be as truthful as possible whenever I appear in
15 Court. Obviously, Gibbs & Bruns from Houston, has been the
16 one who has been directing traffic on behalf of the
17 institutional investors. They were the ones who were
18 spearheading the RMBS settlement, and my firm served as
19 local counsel. And so, my understanding comes from them.
20 It doesn't come from anything that I have seen or observed.
21 So, my understanding from them is that what this -- they
22 believe what this is, it is a pretext just to avoid
23 distributing the funds. And that, Your Honor --

24 THE COURT: Which is the pretext -- the article 77
25 proceeding?

1 MR. OSTROW: The request for instructions on how
2 to do it.

3 THE COURT: To what end? What's the hypothesis as
4 to why they want to avoid distributing the funds?

5 MR. OSTROW: I can't speak to that, Your Honor.
6 The idea is that after all this time negotiating the RMBS
7 settlement, which was dated March of 2017, signed on June
8 1st, and had the hearing in July. Now, suddenly, after all
9 this, and after the estimation hearing, there is certainly
10 some questions about how to distribute money. And the
11 questions that are being asked are the questions that
12 related directly to the provisions of the RMBS settlement
13 agreement. And you can see from the petition that was filed
14 in state court, all over the petition. In many paragraphs
15 there are citations to quotations from the RMBS settlement
16 agreement. They're asking the state court judge to
17 interpret that and direct them on how they should make the
18 distribution. That, to us, obviously, is offensive to the
19 reservation of exclusive jurisdiction that Your Honor had
20 when Your Honor approved the RMBS settlement agreement and
21 that's the last decretal of the paragraph of the 9019 award.
22 So, to the extent that they had any questions at all, they
23 should come back here and ask them. And if they come back
24 here and ask them, then those who are not running on an
25 emergency basis, such as myself, will be able to explain to

1 Your Honor why these questions are either beside the point,
2 or why they don't matter, and why the important thing that
3 the institutional investors are interested in, is finally
4 getting their distribution, to which they are entitled, and
5 not having the money put in escrow for an indefinite period
6 of time, while some court who has no prior experience with
7 this particular agreement, tries to parse through the
8 various provisions.

9 This Court is the court that approved it. This
10 Court is the court that reserved exclusive jurisdiction over
11 its interpretation. And to the extent that there is a
12 legitimate question about how this should work, this Court
13 is the court that should answer that legitimate question.
14 And if there isn't a legitimate question, but rather a
15 pretext, then this is the court that will most easily see
16 through that, and order distribution to occur.

17 THE COURT: All right, now I understand. Thank
18 you. So, let's see what we can agree on. First of all,
19 there is no need to move the money tomorrow, is there?

20 MR. HOUP: Well, I was planning to answer Your
21 Honor's first question, which is what happens tomorrow?

22 THE COURT: I'm just trying to deal with the most
23 urgent things first. And the most urgent thing right now is
24 the notion that tomorrow this money could move in a way that
25 I am being told would, in not so many words, irreparably

1 harm the institutional investors because it will set the
2 stage for what they're characterizing as further delay. So,
3 the best answer to that is to preserve the status quo and
4 not do that until there can be a thoughtful process around
5 figuring out whether what Mr. Ostrow says is accurate or
6 inaccurate in the following respect: If it is true that --
7 and I cannot tell you, okay -- if it is true that the only
8 thing that needs to be interpreted is the RMBS settlement
9 agreement, I'm doing that. Justice Friedman is not doing
10 that. On the other hand, if it is the case that there is
11 ambiguity or holes in the RMBS settlement agreement, that
12 require the interpretation of the indentures, under New York
13 State Law, that's another question. I believe that I have
14 jurisdiction to do that, and I can decide to do that, or to
15 abstain. But, it's more complicated than that, and I'll
16 just give you all of my thoughts and you can respond to that
17 in any order that you like.

18 Because I'm not happy. These claims have been out
19 there for 10 years. The indentures haven't changed. There
20 was a settlement in 2015 involving these same indentures.
21 As many of you know, that settlement didn't work. There was
22 the so-called RMBS settlement. That did work. That was
23 approved almost a year ago. Then we had the lead up to
24 trial. Everyone knew this was coming. Not only that, but I
25 ruled on March 8th. You filed these papers on April 4th. I

1 just am -- and I fully understand and I know that many of
2 you who've been with this process for a long time, and there
3 are new faces and there are old faces, but that I have
4 repeatedly expressed frustration with the seeming inability
5 of the Trustees to move forward. And here we are. And
6 you're back. The money has moved out of the estate. We
7 still have the opt-out trust to deal with, which is not for
8 today. The last thing I want to do is to interpret the
9 governing indentures, but I will not -- I do not want to be
10 placed in the position of relinquishing my jurisdiction over
11 the settlement agreement. And at this moment, I can't tell
12 which is which. I am very disinclined to get involved with
13 rendering a decision under New York State law, on the
14 meaning of provisions in the indenture. But I don't know,
15 at this moment, whether and to what extent there is that
16 lack of clarity in the RMBS settlement agreement.

17 So, the first order of business is to figure out
18 how to get me out of the jam that I'm in right now, because
19 there is no reason, as far as I can discern, that that money
20 has to move tomorrow at 10 o'clock in the morning.

21 MR. KRAUT: Your Honor, let me try to address some
22 of the concerns you have.

23 THE COURT: Sure.

24 MR. KRAUT: I don't think there's any question
25 that this Court has jurisdiction to interpret its own order,

1 as is in the moving parties' papers, or that the Court has
2 jurisdiction to adjudicate disputes as to the interpretation
3 and enforcement of the settlement agreement. That's not
4 what this is about, and I understand that that's the
5 Petitioner's position here. That's not what this is about.
6 This is dispute about the interpretation of the trust
7 agreements. It's not --

8 THE COURT: But my point is, that that's what you
9 say, and that's different from what the institutional
10 investors say.

11 MR. KRAUT: I understand, Your Honor, and that's
12 why I'm going to try to help you through this. If you --

13 THE COURT: I do not need your help through this,
14 all right. You can make arguments, but I do not need your
15 help.

16 MR. KRAUT: Understood, Your Honor.

17 THE COURT: Go ahead.

18 MR. KRAUT: There's a section of the settlement
19 agreement, 306(d) that expressly set forth what the parties
20 to this settlement agreement understood what happened in a
21 situation like this. The parties are the institutional
22 investors, the plan administrator and the Trustees. And it
23 provides that notwithstanding anything to the contrary set
24 forth above, each accepting Trustee and/or the part
25 responsible for implementation, shall be entitled, prior to

1 implementing the payment terms, to seek further guidance
2 from a court of competence jurisdiction regarding the
3 procedures under the governing agreements related to this.
4 And so, it was always understood that if one of the parties
5 who was going to making the distribution had a question
6 about how that distribution should occur, that they would
7 have the ability to do that. When the parties wanted to say
8 the bankruptcy court shall enter findings of fact, the
9 bankruptcy court shall, they said that. There's no dispute
10 as to the interpretation of this provision. The dispute is,
11 how, within the internal affairs of trust, how the Trustee,
12 now having resolved the claims, now having received the
13 money, how the Trustee should be allocating payments within
14 a trust, solely the internal affairs of the trust. This
15 doesn't involve --

16 THE COURT: I understand and I understood that for
17 several hours now. But it still doesn't answer the question
18 of which side of the ledger the dispute falls on, because it
19 is the institutional investors' position that this is not
20 implicated. So, I agree with you. I don't disagree with
21 you. But what I'm saying to you is, at this moment, I
22 cannot figure out whether this can be -- whether there are,
23 indeed, questions that need to be placed in that bucket,
24 versus the argument that, to simplify, the RMBS settlement
25 agreement is playing on its face and, therefore, the

1 distributions ought to take place in one certain way. I'm
2 not entertaining that question this afternoon. I just
3 can't. So, I still would like an answer to the question of
4 why the money needs tomorrow. Why can we not -- because
5 what you're telling me is, fundamentally, everything has to
6 stop anyway for there to be an Article 77 proceeding, right?
7 And what the institutional investors are saying is simply,
8 just don't move the money from where it is now into this
9 escrow account. And again, I said to Mr. Ostrow, I don't
10 fully understand what the difference is, because the money
11 has let Lehman. The money is already over on your side.
12 So, I'm just not sure what difference it really makes.

13 MR. KRAUT: I'll turn it over to Mr. Houpt, but
14 the basis of some pretext is the first I'm hearing of it as
15 our rationale, is new. But the idea that somehow the
16 institutional investors would be prejudiced by money being
17 moved into an interest-bearing escrow account, that escapes
18 me.

19 MR. HOUP: That's right, you know. And I think
20 that you asked the correct question at the outset which is,
21 what is the emergency? What's happening tomorrow that's
22 irreversible? We have proposed an order to show cause to
23 Justice Friedman which I'd certainly counsel as co-counsel
24 has. And it asks for three things: One is that the Court
25 approve a notice program so that all investors can receive

1 notice of the proceeding; the second is that it approve the
2 escrow agreements, and the third is that it approve the
3 investment of the escrowed funds in a, basically, AAA US
4 Treasury-backed money market funds, so that they can earn
5 some interest for however long the Article 77 lasts.
6 Perhaps the Article 77 will end next week and you'll enter a
7 permanent injunction. Perhaps it will go on for six months.
8 But as we have done in previous similar proceedings, with
9 never any objection from any investor, we thought that it
10 was prudent and appropriate, although not expressly
11 authorized by any agreement, to put the money in an
12 interest-bearing account, for the benefit of investors.
13 We're not distributing the money to the four winds tomorrow.
14 We're not putting it somewhere where it cannot be recovered.
15 We're putting it in the safest and most liquid investments
16 that we could find. That's all that's happening tomorrow.
17 We're certainly not asking the Court to interpret any
18 agreement, let alone the settlement agreement. Nor has
19 counsel identified any way in which our petition -- and I
20 don't think that you want to do this today, but we can
21 discuss the questions that we've actually, the substantive
22 questions that we put to the state court, none of them have
23 anything to do with interpreting the settlement agreement.
24 The settlement agreements --

25 THE COURT: We have a sharp disagreement on that.

1 MR. HOUPPT: We have a dispute about that, but I
2 submit that the investors have not identified any way in
3 which even the substantive questions, that will be decided
4 down the road, let alone the preliminary questions that will
5 be decided at the order to show cause, implicate
6 interpretation of the settlement agreement in any way.

7 THE COURT: Which order to show cause? The one
8 that you're here on today or the one that's going to be
9 heard tomorrow?

10 MR. HOUPPT: I'm sorry. The state court -- the
11 order to show cause before Justice Friedman. That has
12 nothing to do with interpreting any contract at all.

13 THE COURT: Okay. I get that. Tomorrow is all
14 about moving the money, and that's why I started where I
15 started with you, Mr. Ostrow, because I still don't
16 understand why putting money in an interest-bearing account
17 is a bad thing, or prejudices the institutional investors,
18 as long as it is understood that it's not prejudicial to
19 you. One thing that's clear is I'm not going to -- there is
20 -- this money has left Lehman. So, I have little, if
21 anything, to say about it from that perspective. I have the
22 retention of exclusive jurisdiction. So, the only question
23 is whether this is interpretation of the RMBS settlement
24 agreement, or interpretation of the indenture. And my main
25 point to you today is that I can't tell yet. I am not

1 inclined to involved in the interpretation of these
2 indentures. However, I am extremely -- I am mystified by
3 the Trustee's conduct. I'm mystified. How could it be that
4 we are here in April, and you have only just begun the
5 process of figuring out what to do with the money that you
6 knew was coming? The RMBS settlement agreement -- remember?
7 It was going to be \$2 billion or it was going to be \$11.4
8 billion. And, as you pointed out, Justice Friedman has been
9 busy doing this for other indentures by the same clients
10 that you're representing here today. I just don't
11 understand it. Hence, I guess the suspicion that there is
12 something else going on. I don't know what that else would
13 be, other than I understand that the Trustees are very
14 cautious about proceeding in the face of what they determine
15 is ambiguity. So, I'm not suggesting any bad faith on your
16 part, but I really don't understand how this happened.
17 We've all known this was coming for years.

18 MR. KRAUT: Let me try, Your Honor.

19 THE COURT: Could you?

20 MR. KRAUT: Yeah. At the time the settlement was
21 being discussed, there were three sets of parties.

22 THE COURT: The RMBS settlement?

23 MR. KRAUT: Yes, Your Honor. There were the
24 Trustees, Lehman and the institutional investors -- all
25 worked on this settlement. There were hundreds of trusts

1 involved in that settlement agreement. A decision was made
2 that Paragraph D of 306 was the way to deal with this issue,
3 rather than trying to have an agreement that the parties
4 were eager to move forward, not knowing whether this issue
5 was going to be something that was going to affect one or
6 all the trusts. And so, rather than try to put in a process
7 that would separately interpret what needs to happen for
8 somewhere between 100 and 400 different trusts, this was
9 meant to be the way to deal with this issue.

10 At the time the settlement agreement as
11 negotiated, it wasn't clear whether Trustees were going to
12 accept on behalf of some of the trusts, all of the trusts.
13 And so, it wouldn't have been possible to build an agreement
14 that accounted for every one of these without being over
15 inclusive in that way.

16 THE COURT: Okay, but wait. But when the RMBS
17 settlement agreement was entered into in June?

18 MR. KRAUT: Signed, I think in -- we signed on in
19 July.

20 THE COURT: Right. But it was entered into
21 between Lehman, on the one hand, and the institutional
22 investors on the other hand, March or April.

23 MR. COSENZA: March 17th. And the proceeding --

24 THE COURT: March of 2017.

25 MR. COSENZA: And then 9019 was in early July,

1 like July 6th or 7th.

2 THE COURT: By that time, that was the window for
3 the Trustees to accept or not, right?

4 MR. COSENZA: Correct, yes.

5 THE COURT: So, at that point, when I approved the
6 9019 settlement, we knew who was in, and we knew who was
7 out. So, at that point, the universe of trust was fixed,
8 right?

9 MR. KRAUT: Subject to Your Honor's approval, yes.

10 THE COURT: Right. Okay. So, when I approved the
11 9019 settlement, we were then on the path to the trial,
12 which was going to result in a distribution. And the only
13 question was, how much? So, at that point in time, the
14 Trustees knew that they were going to have to figure out how
15 to give out the money, right?

16 MR. KRAUT: Correct.

17 THE COURT: And so, what's the explanation for why
18 they did nothing between then and April 4th?

19 MR. KRAUT: I don't think that the Trustee did
20 nothing. I think the Trustees anticipated that this issue
21 was playing out in front of Justice Friedman, and in the JP
22 Morgan matter. The Trustees understood that to the extent
23 that these issues were going to happen, they were going to
24 be brought, as they were in those other proceedings, as
25 follow-ons after the distribution was made.

1 THE COURT: Did you communicate that to the
2 institutional investors?

3 MR. KRAUT: They were parties in the JP Morgan
4 matter. They were parties in the Bank of America
5 proceeding, and this is consistent with how this played out
6 in those as well.

7 THE COURT: So, you didn't answer my question.
8 There was an extensive negotiation with the institutional
9 investors here, and with the Trustees. And when we did this
10 for the first go-round in the 2015 settlement, people, folks
11 were talking about article 77 proceedings and similar
12 proceedings in other jurisdictions. And the beauty of the
13 9019 settlement, I believed, was that it was going to avoid
14 all of that. So, that turns out to not be true. And my
15 question is, which is neither here nor there, but just of
16 historical interest, is whether or not that was
17 communicated, whether the institutional investors had any
18 idea that there was going to have to be an article 77
19 proceeding as a follow-on to everything we did here. I
20 don't know if Mr. Ostrow knows that because he wasn't
21 involved at that juncture, so I'm not going to put him in
22 the position of having to answer that.

23 But it just really goes to kind of a balancing of
24 you know, of the prejudice and explanation for why it is
25 that I think the institutional investors have reacted the

1 way they have. But let's try to get back to what I really
2 have to deal with today. And let me go back to Mr. Ostrow
3 for a moment. I don't understand that there's any emergency
4 or prejudice to the institutional investors in allowing the
5 funds to be investigated in an escrow account, with all of
6 your rights reserved, to continue to try to convince me that
7 I ought to decide the open issues.

8 MR. OSTROW: Your Honor, obviously, we're not
9 contending that the money is going to be stolen. The point
10 that we are concerned about is obviously an indefinite delay
11 in front of a court that really shouldn't be doing this
12 matter. Now, if they came here, and asked Your Honor to say
13 could we put this in escrow for a little while we figure out
14 whether this belongs in this Court or in the state court, I
15 don't know that -- you know, I haven't talked to the
16 institutional investors, but it's hard for me to imagine how
17 there would be a problem with that as long as the money can
18 be taken out readily.

19 THE COURT: So, you feel more comfortable if the
20 money goes into escrow pursuant to my order as opposed to
21 Justice Friedman's order?

22 MR. OSTROW: Yes, because once something is
23 started in the state court -- and again, and I mentioned
24 this in my affidavit, because one of the things we started
25 to look at first was can we remove the Article 77? And, you

1 know, the mysteries of being a party to an Article 77 is
2 something that's a little intractable to me. But
3 apparently, the only parties at the moment are the
4 petitioners in the state court -- the RMBS Trustees and the
5 related transaction parties.

6 THE COURT: But counsel indicated that part of the
7 relief being sought was to establish notice procedures. I
8 guess that's different from an individual investor,
9 noteholder, becoming a party.

10 MR. OSTROW: My understanding is sort of
11 rudimentary. But my understanding is there is a process
12 that one has to go through if you're not a petitioner, to
13 become a party. And that process takes some time. There's
14 also a clock in Rule 9027, a 30-day clock, to remove
15 something, and only a party, under 28 USC 1452 can remove
16 something. So, we would be, obviously, coming here with an
17 application under Rule 9006 to extend the time, and Rule
18 9027 to remove something.

19 But the problem is, you know, we believe that this
20 Court is the Court that should make the decision, should
21 direct the traffic. Because, as Your Honor says, if you
22 decide you should abstain, you can abstain.

23 But we think that this is something that Your
24 Honor reserved exclusive jurisdiction on, and we have our
25 doubts as to whether these questions are legitimate, that

1 would result in a prolonged, indefinite delay of the day of
2 distribution.

3 But to the extent the questions are legitimate,
4 they belong here, or at least they belong before Your Honor
5 so that Your Honor can decide whether you should decide
6 them, or the State Court should decide them.

7 THE COURT: So, this is where I am. I want time
8 to be able to decide whether and to what extent I need to
9 decide. I said this at the top. To the extent that I would
10 conclude that what's required is interpretation of the RMBS
11 settlement agreement and order which I entered, I ought to
12 do that. To the extent that I conclude, after having more
13 than four hours with the papers, that this is indeed a hole
14 in the RMBS settlement agreement and it was contemplated
15 that a court of competent jurisdiction would make the call,
16 then that's what we should do.

17 Why can't I enter an order directing that the
18 money be put into escrow pending further decision of this
19 Court on that threshold question of whether and to what
20 extent I am going to act? And if you wish to proceed in the
21 State Court with respect to your noticing procedures, Mr.
22 Ostrow, I don't see why that would concern you. They ought
23 to start, and notice is good. It's chicken soup.

24 MR. OSTROW: There may be, Your Honor, but the
25 question is how many proceedings should run simultaneously?

1 And again, that's for Your Honor to decide. But we don't
2 want to be in two places --

3 THE COURT: I under --

4 MR. OSTROW: -- at the same time.

5 THE COURT: Right. I understand. But now I'm
6 trying to address your concern. You answered that you would
7 feel less prejudiced by my entering an order directing or
8 authorizing - perhaps authorizing, but not directing -- that
9 the money be put into an escrow, subject to further order of
10 this Court. So, is that something that the Trustees are
11 able to agree to, or amenable to not objecting to?

12 MR. SCHNELL: Your Honor, Robert Schnell from --

13 THE COURT: Yes.

14 MR. SCHNELL: -- Faegre, on behalf of Wells Fargo.
15 I wasn't here for the underlying proceedings.

16 THE COURT: Yes, lucky you.

17 MR. SCHNELL: Lucky me. Let me just respond to
18 the question you just asked, and then let me give a little
19 context for your underlying concern about why this is taking
20 so long.

21 In terms of the question you just asked, we've
22 commenced the proceeding in Article 77; we've published
23 notice on the website. People are told if you want to be
24 heard on this, show up at 10:00 tomorrow in front of Justice
25 Friedman. All this is going to happen.

1 We think it's important to give notice. No one's
2 had notice of this proceeding, other than us here a couple
3 of hours ago. I think it would be useful to go ahead with
4 the Article 77 proceeding because I don't see, as I think
5 you don't see, any prejudice to the institutional investors
6 if the money's invested. It should be invested. There
7 should be interest.

8 And I note, just for your understanding, that
9 we're not going to get any fees out of this. There's
10 nothing in this for the Trustees in this escrow arrangement.

11 THE COURT: Okay, but here's my -- I keep going
12 back to the same question. We can all agree that having the
13 two-plus billion dollars in an interest-bearing account
14 would be a good thing.

15 MR. SCHNELL: It's not that much, Your Honor, but
16 yes, it would be a good thing

17 THE COURT: Okay.

18 MR. SCHNELL: Because it's \$2 billion discounted,
19 right, it's about \$700 million, I think.

20 THE COURT: You're quite right. Thank you. So,
21 let's get interest on it, right? Okay.

22 MR. SCHNELL: It should be invested, right?

23 THE COURT: Right.

24 MR. SCHNELL: And now it's not, and we want to put
25 it in the -- we've got the affidavits --

1 THE COURT: Okay.

2 MR. SCHNELL: -- from Professor Hubbard at
3 Columbia. This is the best place. It's very liquid. If
4 this Court were to later order that something else should
5 happen with the money, it's in the most liquid investment
6 possible if we invest it that way.

7 And plus, we'll have a hearing. There will be
8 notice. There should be a notice protocol. We don't want
9 to delay that. It's the same notice protocol we've used in
10 these other cases. So, we want to get that started. We
11 have no more interest in delay than the institutional
12 investors do. People have shown up in these proceedings and
13 taken positions quite contrary to the institutional
14 investors, which gets me to my point of why we're here now,
15 right? Because there's no point in starting this procedure
16 until you know how much money is involved.

17 We've run through the waterfalls. There are
18 hundreds of trusts that are not here because we ran through
19 the waterfall to see whether it made a difference or not.
20 It didn't. We figured it out internally. You know, if the
21 difference in distribution is \$50,000 or less, we're not
22 going to put the trust into the proceeding. We couldn't do
23 that until we knew what the money was.

24 Folks aren't going to show up and object or take a
25 position, hire lawyers, until they know they have some money

1 in the game. So, until there's some money to be
2 distributed, the point of doing this proceeding is really
3 just a theoretical exercise. And that's not what we're here
4 for.

5 We're here for an actual exercise, where people
6 have some skin in the game. And until there is a
7 distribution, an amount we can run through the numbers,
8 people can see what's involved, it's premature to start. So
9 that's --

10 THE COURT: You know, I think --

11 MR. SCHNELL: -- my understanding of the delay.

12 THE COURT: But I think it's kind of -- I think
13 it's still beside the point of the issue surrounding the
14 movement of the money from one account to the other account.
15 And I'm not following your argument because the amount that
16 was approved after the estimation proceeding was the lowest
17 amount that could be approved.

18 MR. SCHNELL: Right. But if it had been the
19 higher number, we'd be --

20 THE COURT: You --

21 MR. SCHNELL: -- here with a different set of
22 trusts, I think.

23 THE COURT: Yes, you would have had more trusts.

24 MR. SCHNELL: Maybe. It all depends on how the
25 waterfalls work.

1 THE COURT: But -- no, but stick with me here. I
2 approved -- the range was \$2.38 billion to \$11.4 billion,
3 right? I approved \$2.38 billion. Your rationale for not
4 going ahead was you didn't know which trust. Well, you have
5 the fewest trusts that you could've possibly had. You would
6 rather have the high-class problem of having had more
7 trusts, right?

8 MR. SCHNELL: Sure.

9 THE COURT: Right. But that doesn't provide a
10 reason for not having figured out what you would need to do
11 with these trusts that are here right now.

12 MR. SCHNELL: But to do that, we have to start a
13 proceeding, Your Honor, because the underlying governing
14 agreements don't tell us. That's the problem. And you
15 wouldn't start a proceeding for some trusts that might need
16 to be here, and we don't know, there might be some others
17 that have to get added, depending on what you rule. Until
18 we know what you're going to rule --

19 THE COURT: Okay, look, I'm certainly not in a
20 position, you know, to get in the weeds of the operation of
21 these trusts, which is the essence of the problem that I
22 have.

23 MR. SCHNELL: It is, Your Honor.

24 THE COURT: Because I do not want to do that. I
25 only want a reasonable period of time to figure out to what

1 extent I need to interpret the settlement agreement or not.

2 I have to say that I'm not entirely convinced by
3 your argument. You knew that there were going to be a
4 minimum number of trusts involved. And I don't know enough
5 about Article 77 proceedings to know whether and to what
6 extent it would have been impossible or impractical to begin
7 an Article 77 proceeding for those trusts whom you knew were
8 going to be in the money.

9 And in addition, I will say that... Well, let me
10 leave it at that, because we could-- this is very
11 interesting, and you and I could keep discussing this, but I
12 don't think --

13 MR. SCHNELL: Right, Your Honor.

14 THE COURT: -- it would bear any fruit. Tell me
15 what your objection would be to my ordering or authorizing
16 the deposit of the money into the escrow accounts, at least
17 on a temporary basis, until I can figure out to what extent
18 I'm keeping this and to what extent I would abstain.

19 MR. SCHNELL: And Your Honor, of course there's
20 more that we want from Justice Friedman.

21 THE COURT: Yes.

22 MR. SCHNELL: And I assume we'll go ahead with
23 those other things. My biggest concern about that piece --

24 THE COURT: Yeah.

25 MR. SCHNELL: -- is there's no notice to anyone.

1 There will be some notice of the proceeding tomorrow. It's
2 been up for a couple of days. And I think it's important
3 that we get as much protection as we can in terms of notice
4 to having people come.

5 And I don't see any reason not to have Justice
6 Friedman enter the order because, again, if the
7 institutional investors are right and this belongs here,
8 there's nothing in that order that prevents this case from
9 being adjudicated here. And we have given notice of the
10 proceeding in front of Justice Friedman. I think it makes
11 sense to go ahead there.

12 Now, if you order that we put the money into
13 escrow pursuant to the escrow agreements and the investments
14 that the parties have indicated they're going to make, of
15 course, we'll do that.

16 MR. OSTROW: Your Honor, the problem that I have
17 is that if there is an order of a court of coordinate
18 jurisdiction, then if we come back here and say there's
19 something wrong with that, it's not entirely clear that this
20 Court would be able to fix it, because this Court's not an
21 appellate court to the State Court.

22 THE COURT: No. That's absolutely right.

23 MR. OSTROW: And --

24 THE COURT: That's absolutely right. So, I don't
25 -- so, let's -- so, we all agree that the money ought to go

1 into escrow. I'm not convinced, Mr. Ostrow, that there is
2 that much difference, but I hear your concerns and you
3 continuing to express them.

4 I think the best solution, albeit imperfect -- and
5 I understand you've noticed it and you want to go ahead.
6 And I understand that Justice Friedman knows how to do this,
7 and I don't. So, we can all agree on that. What I would
8 like is just a very narrow window of time for the parties to
9 address on the merits, with more than four hours to think
10 about it, the parameters of the dispute. To what extent is
11 this interpretation of the RMBS settlement agreement, and to
12 what extent is it not?

13 So, can you not agree to delay the transfer into
14 the escrow account for 10 days? Let me put it slightly
15 differently. If I order you to do that, then presumably you
16 would follow my order, right?

17 MR. SCHNELL: You can count on it.

18 THE COURT: Okay. All right. So, very good. So,
19 I'm going to enter an order incident to the order to show
20 cause today that's been brought on by the institutional
21 investors, directing that the Trustees, to the extent the
22 relief they seek in the order to show cause to be heard
23 before Justice Friedman tomorrow is granted, that the
24 Trustees delay the transfer of the funds from the accounts
25 in which it is currently held to an escrow account to a date

1 no earlier than 10 days from today, except as otherwise
2 ordered by this Court.

3 MR. HOUPPT: Your Honor, I have a substantive
4 objection to that, but I just need to say that for Citibank,
5 at least, the money is already in an account that is all
6 escrow account. And what we were asking is to move into the
7 money market fund. So, we just want to keep it where it is
8 now.

9 THE COURT: Yes, keep it -- thank you for that
10 clarification. So, the money will not move from where it is
11 today for 10 days, unless earlier contrary order of this
12 Court. And in that period of time, for better or worse, you
13 can have time to brief the issue as we've teed it up today.
14 I don't think that there's much agreement about the issue.

15 And Mr. Ostrow, the institutional investors can
16 make arguments as to whether or not I should abstain, but I
17 think that's where the action is. Because everybody agrees
18 that I have jurisdiction, and I think everybody agrees,
19 hypothetically, that to the extent that its interpretation
20 of the order and the RMBS settlement agreement, that's in my
21 bailiwick. And to the extent that it's not, Mr. Ostrow is
22 going to argue that it still should be in my bailiwick, but
23 that that's a different thing.

24 So, can we agree on a briefing schedule?

25 MR. OSTROW: Certainly, but I want to ask Your

1 Honor why the proceeding is going to go forward in the State
2 Court tomorrow, because --

3 THE COURT: Because I just -- your most acute
4 concern was with the money moving.

5 MR. OSTROW: That is true.

6 THE COURT: Okay. And I don't --

7 MR. OSTROW: But that's not the entirety.

8 THE COURT: I understand, but you can't have
9 everything you wish for all the time. So, I -- and I very
10 much believe in -- I don't -- it's of concern to me that
11 this has been fully noticed.

12 And to pick up on the point there are other
13 investors and certificate holders other than those that you
14 represent, I don't see any prejudice in allowing the
15 proceeding to at least begin. And to the extent,
16 hypothetically, that you come back here, and I say I'm going
17 to decide these issues, I'm going to decide the issues.

18 MR. OSTROW: I understand that. I just want to
19 point out, Your Honor, that nothing has been signed in the
20 State Court. The order to show cause has not been signed.
21 Tomorrow's hearing is to consider whether to sign the order
22 to show cause and what preliminary relief should be granted.

23 THE COURT: Well, but --

24 MR. OSTROW: So --

25 THE COURT: -- you can go tomorrow and tell

1 Justice Friedman, here's what happened yesterday --

2 MR. OSTROW: Hopefully, we'll have a transcript to
3 do that, but I'm -- maybe not.

4 THE COURT: Well, I mean, you can each give your
5 very honest, you know, recitations of what happened. And if
6 you want to get together tonight and prepare a short order
7 reflecting the 10-day delay, that to the extent that Justice
8 Friedman determines to grant the relief that's been
9 requested in the order to show cause, that the parties here
10 have been directed by me to delay the transfer of the funds
11 from the accounts in which the funds currently reside by 10
12 days, in order to enable this Court to determine whether or
13 not -- whether and to what extent I will exercise
14 jurisdiction on the issues raised with respect to the
15 interpretation of the settlement agreement and/or the
16 indenture.

17 And that's the best that I can do in terms of
18 preserving the status quo as best as possible and, frankly,
19 respecting, you know, Justice Friedman's purview, you know,
20 over the issues.

21 I have to confess I don't know that you'll be able
22 to get a transcript tonight. If we had been smarter, we
23 could have had a, you know, real-time reporter here. But
24 this was rather rushed.

25 MR. SCHNELL: I think that's just fine, Your

1 Honor. We can certainly agree on a briefing schedule. Do
2 you have any druthers as to what you'd like?

3 THE COURT: Well, okay, let's see. Let's work
4 backwards from a hearing date, okay?

5 MR. SCHNELL: Sounds good.

6 THE COURT: So, what's today? Today is April
7 10th?

8 MAN 1: Yes.

9 THE COURT: Okay. So, April 19th; that's day
10 nine. Conveniently enough, I have it available.

11 MR. OSTROW: You're not going to be at the ABI in
12 D.C.?

13 THE COURT: I was going to be at the ABI in D.C.,
14 where you see my name on the list of people who are going to
15 be there, but I can't travel because of this. So, that day
16 is now wonderfully open. Oh, are you going to be at the
17 ABI?

18 MR. OSTROW: No, I'm not, actually.

19 THE COURT: Okay. All right, so I can give you
20 April 19th at 10:00. I don't know that -- so, you tell me
21 what you'd prefer to do. Do you want to do somebody goes
22 first and somebody goes second, or do you want to do
23 simultaneous? And you're going to have to... I'm on trial
24 through the end of the day on the 18th, so I'm going to need
25 more than a couple of hours to review your submissions. So,

1 you tell me.

2 MR. SCHNELL: (indiscernible)

3 THE COURT: Yeah.

4 MR. SCHNELL: (indiscernible)

5 THE COURT: I'd like to have the last thing filed
6 in by 4:00 PM on Tuesday the 17th. Hmm? I think the best
7 thing would be simultaneous submissions, and then at the
8 argument on the 19th, you can respond to what each other
9 said. That just seems to me to make the most sense and give
10 you the most time to lay out your arguments.

11 MR. KRAUT: I think that's --

12 THE COURT: You think that's okay?

13 MR. KRAUT: I think that's fine and --

14 THE COURT: Mr. Ostrow?

15 MR. OSTROW: Yes, Your Honor, that's fine.

16 MR. KRAUT: I don't know if the plan administrator
17 would want to put papers in. They were parties to the
18 agreement --

19 THE COURT: I'm going to take a wild guess that
20 they're going to say no. They're not even paying attention.
21 Mr. Cantor?

22 MR. CANTOR: I'm looking at my calendar.

23 THE COURT: The question on the table is whether
24 or not the plan administrator was going to put in papers,
25 and my guess was the answer would be no.

1 MR. CANTOR: Yes. We have no -- unless you'd like
2 us to, we'd rather not (indiscernible) --

3 THE COURT: Mr. Cosenza?

4 MR. COSENZA: Your Honor, (indiscernible) our
5 preference is not to, but if the Court would like us to, we
6 will.

7 THE COURT: I just wanted to make sure you were
8 included in the timing, so...

9 MR. SCHNELL: How long would you like the briefs
10 to be, Your Honor?

11 THE COURT: I won't give you a page limit.

12 MR. SCHNELL: Okay.

13 THE COURT: Okay.

14 MR. SCHNELL: Thank you, Your Honor.

15 THE COURT: Just do your best to give me a roadmap
16 around the various provisions, both in the settlement
17 agreement and in the indenture, so that I can do the best
18 job possible to figure out what's what.

19 MR. SCHNELL: Certainly, Your Honor.

20 THE COURT: All right. Okay. What about -- shall
21 I -- I'm going to so order the record. All right. And do
22 you want to -- I always am nervous when I ask the lawyers to
23 go and prepare an order in a circumstance like this.

24 Are you content to proceed with the record being
25 so ordered, knowing that you can get a transcript of it at a

1 later date, rather than -- it just seems to me to be a
2 better way to go than to have you try to reduce this to an
3 order and put you at peril of feeling that it isn't exactly
4 right.

5 MR. SCHNELL: I think that's fine, Your Honor. We
6 understand, I believe, what Your Honor has ordered, and I
7 don't think we need any more.

8 MR. OSTROW: That's fine, Your Honor.

9 THE COURT: All right. Very good. Please send my
10 regards to Justice Friedman. And we'll see you at 10:00 on
11 the 19th. And if by any chance you come to an agreement
12 that obviates the need for a hearing on the 19th, you'll let
13 us know if that happens, all right?

14 Thank you so much for making yourselves available
15 on such short notice, particularly the Trustees, and I
16 appreciate it. All right?

17 ALL: Thank you, Your Honor.

18 THE COURT: Thank you very much.

19

20 (Whereupon these proceedings were concluded at
21 5:00 PM)

22

23

24

25

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya

Ledanski Hyde

Digitally signed by Sonya Ledanski
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Date: April 13, 2018